

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DERRICK IRONS, #1391546

§

VS.

§

CIVIL ACTION NO. 2:11cv350

DIRECTOR, TDCJ-CID

§

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-entitled and numbered petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 was heretofore referred to United States Magistrate Judge Caroline M. Craven. The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Petitioner has filed objections.

Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Specifically, Petitioner re-argues the positions he raised in his original response to the Magistrate Judge's Order to Show Cause regarding the statute of limitations. That is, he contends that he is not challenging his conviction, but the Texas Court of Criminal Appeals' "failure" to consider or adjudicate his second state habeas application on its merits. He also contends that his ineffective assistance of counsel claim somehow survives independently of the Texas Court's dismissal. The Magistrate Judge addressed both of these points thoroughly in her Report and Recommendation and Petitioner has raised nothing new in his objections. Therefore, his objections are without merit and will be overruled.

The Magistrate Judge also recommended that a certificate of appealability be denied. Nonetheless, Petitioner has filed a separate motion for a certificate of appealability (docket entry #15). He again has raised nothing that the Magistrate Judge has not already addressed. Reasonable jurists could not debate the denial of Petitioner's § 2254 petition. It is therefore

ORDERED that Petitioner's objections are **OVERRULED** and his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability (specifically including Petitioner's motion at docket entry #15) is **DENIED**. All motions by either party not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 8th day of February, 2012.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE